

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL WJ HAWN,

Plaintiff,

v.

CLALLAM COUNTY JAIL, et al.,

Defendants.

Case No. 3:24-cv-05310-TL-TLF

REPORT AND  
RECOMMENDATION

NOTED FOR MAY 23, 2025

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge Theresa L. Fricke. Plaintiff Daniel Hawn, unrepresented by counsel, initiated this civil rights action. Pending before the Court is a Motion for Summary Judgment filed by Defendants Clallam County Jail, Sheriff Brian King, Clallam County Medical, Sergeant Morgan, Sergeant McCann, and Kimberly Yackan (collectively, "Defendants") See Dkt. 26. Plaintiff did not respond to Defendants' motion for summary judgment.

Plaintiff brings the following claims against Defendants in his complaint: (1) First Amendment claim against Defendants Sergeants Morgan and McCann for opening his outgoing legal mail; (2) Eighth Amendment claim against Defendant Kimberly Yackan and Clallam County Medical for inadequate medical care; (3) Fourteenth Amendment claim against Defendants Sergeants Morgan and McCann for failing to accommodate his food allergies and providing inadequate meals; and (4) Fourteenth Amendment

1 claim against Clallam County Jail for opening his legal mail, providing him with an  
2 improper meals, and ignoring his complaints of illness. Dkt. 4 (Complaint).

3 The Court would have considered as evidence Plaintiff's contentions in his  
4 Complaint if he had attested under penalty of perjury that the contents of his pleadings  
5 were true and correct. *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004). Because  
6 Plaintiff's Complaint was not signed under oath or penalty of perjury, the Court cannot  
7 consider Plaintiff's Complaint as evidence against Defendants' summary judgment  
8 motion. Thus, Plaintiff's evidence consists of his testimony at his deposition on  
9 November 18, 2024. Dkt. 27, Declaration of Sarah Tatistcheff, Exhibit A.

10 For the reasons below, the Court recommends Defendants' motion for summary  
11 judgment should be granted in part and denied in part. Plaintiff's claims against Sheriff  
12 King, Fourteenth Amendment claims for inadequate medical care against the individual  
13 defendants, First Amendment claim against Defendant Morgan, and all claims against  
14 Clallam County, should be dismissed with prejudice. Defendant McCann's summary  
15 judgment motion on Plaintiff's First Amendment claim should be denied.

### 16 **FACTUAL ALLEGATIONS**

17 At the time of the incidents alleged in his complaint, Plaintiff was a pretrial  
18 detainee at Clallam County Correctional Facility<sup>1</sup>. Dkt. 4 at 2.

#### 19 **A. Plaintiff's Legal Mail**

20 Plaintiff alleges Sergeant McCann opened his outgoing legal mail to his defense  
21 attorney's paralegal. Dkt. 27, Declaration of Sarah Tatistcheff, Exhibit A, at 20:10-21:12.

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<sup>1</sup> Plaintiff is currently a Monroe Correctional Complex. Dkt. 28. Plaintiff has not submitted a notice of  
change of address.

1 He claims the envelope was sealed stamped as legal mail and the documents enclosed  
2 were legal in nature. Dkt. 27, Tatistcheff Decl., Exh. A, at 23:6-9.

3 He testified the letter he wanted to mail to this paralegal related to an upcoming  
4 evidentiary hearing. *Id.* He later received the letter back with the envelope opened and  
5 with a note stating that this was not legal mail. *Id.*

6 When Plaintiff asked Sergeant McCann why his mail was opened, Sergeant  
7 McCann allegedly told Plaintiff that he was allowed to open and read Plaintiff's legal  
8 mail to search for contraband. *Id.* at 21:8-9. Plaintiff testified during his deposition that  
9 he informed his criminal defense attorney about this incident, but to his knowledge, this  
10 issue was never raised in court or with jail staff. Dkt. 27, Exhibit A at 24:11-17. Plaintiff  
11 testified this was the only issue he experienced relating to his outgoing legal mail. *Id.* at  
12 24:18-20; 25:20-22.

13 During his deposition, he testified Sergeant Morgan informed him that the  
14 incident regarding his outgoing mail was "not a grievable issue" and threatened to put  
15 him in "IMU." Dkt. 27, Exhibit A at 26:1-9.

16 Jail records indicate one time that Sergeant McCann incorrectly opened Plaintiff's  
17 incoming legal mail. See Dkt. 27, at Exhibit D. Sergeant McCann emailed Chief Deputy  
18 Wenzl on May 10, 2024, informing him Plaintiff received a letter that had no stamps or  
19 words on the envelope indicating that it was legal mail, and the return address was not  
20 from a legal office. *Id.* at 1. Sergeant McCann acknowledged that he opened the letter,  
21 but once it was found to be legal mail, he gave it to Plaintiff and explained that he had  
22 opened it because there was nothing on the envelope stating it was legal mail. *Id.*  
23 Sergeant McCann did not write a report following the incident. *Id.*

**B. Plaintiff's Food Allergies**

Plaintiff alleges he discussed his food allergies with Sergeant McCann and Sergeant Morgan several times and submitted multiple kites, but Defendants were unconcerned. Plaintiff testified that he is allergic to eggs, and after informing the jail of this one month after his incarceration, the jail staff continued to put mayonnaise on his food and gave him eggs. Dkt. 27, Tatistcheff Decl., Exhibit A at 29:23-25. *See also*, Exhibit E at 3.

Plaintiff also testified when he received food he knew to have eggs in it, he informed jail staff and his meals were replaced. Dkt. 27, Exhibit A, at 34:1-11; 37:23-38:3. Exhibit E at 5, 6, 7. When he informed Sergeant McCann about his meals having eggs on a few occasions, Plaintiff testified Sergeant McCann stated, "Hey, the main cook that handles the diets wasn't there. I'll talk to him as soon as he gets back." Dkt. 27, Exhibit A at 34: 16-21. When Plaintiff reminded Sergeant McCann that the issue persisted, Sergeant McCann stated, "Oh, I forgot. I'll go deal – I'll go talk to him." *Id.* at 34:22-2. The jail attempted to eliminate eggs from his diet and his food eventually started to arrive to his cell on a special tray with a "no eggs" or "no eggs/mayo" sticker on it. Dkt. 27, Exhibit A, at 31:23-32:7.

Plaintiff filed a grievance on April 24, 2024, expressing his concern that he is not receiving enough protein with the egg replacements the kitchen was providing him. The grievance coordinator informed Plaintiff that their menu is evaluated annually by a Registered Nurse and the jail will ensure Plaintiff is receiving a sufficient substitution for the eggs to ensure his meals contain enough protein and calories. Dkt. 27, Exhibit E at 9.

### **C. Plaintiff's Medical Treatment**

Finally, Plaintiff alleges he received inadequate medical care at the jail. Plaintiff suffers from Crohn's disease, anxiety, depression, post-traumatic stress disorder (PTSD), methicillin-resistant Staphylococcus aureus (MRSA), Cellulitis, Hepatitis C, and herpes. Dkt. 27, Tatistcheff Decl., Exhibit A, at 39:23-24, 40:21-41:2, 41:15-18, 42:3-8, 42:14-15, 43:17. He claims he began experiencing abdominal pain and headaches after starting a new medication, Sublocade; upon informing jail nurse, Defendant Yackan, of his symptoms, she told Plaintiff to stay on the medication for a few more months. *Id.* 50:18-21. Plaintiff also alleges that he learned later that Sublocade was "bad...on your liver" and was never informed of this despite his Hepatitis C diagnosis. Dkt. 27, Exhibit A at 52:25-53:9. Jail medical staff assured him, based on the blood testing they had done, that his liver was not compromised. *Id.* at 53:10-12.

Plaintiff raised a Prison Rape Elimination Act (PREA) incident in his complaint, but did not allege facts about this incident until his deposition. During his incarceration at the jail, Plaintiff experienced a herpes outbreak and informed Defendant Yackan. Dkt. 27, Exhibit A at 43:17-19. Defendant Yackan allegedly asked Plaintiff to show her where the outbreak was while he was in line with other inmates around and he objected to showing her the area in a public setting. *Id.* at 43:20-44:7.

## **DISCUSSION**

### **A. Legal Standards**

#### **a. Summary Judgment**

Summary judgment is appropriate when the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

1 matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247  
2 (1986). The central issue is “whether the evidence presents a sufficient disagreement to  
3 require submission to a jury or whether it is so one-sided that one party must prevail as  
4 a matter of law.” *Anderson*, 477 U.S. at 251–52.

5 The moving party bears the initial burden of showing “that there is an absence of  
6 evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S.  
7 317, 325 (1986). If the moving party does not bear the burden at trial, they can carry  
8 their initial burden by presenting evidence that negates an essential element of the  
9 nonmoving party’s case, or by establishing that the nonmovant lacks the quantum of  
10 evidence needed to satisfy their burden at trial. *Nissan Fire & Marine Ins. Co. v. Fritz*  
11 *Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). If the moving party bears the  
12 burden at trial, they can meet their initial burden by presenting evidence sufficient to  
13 demonstrate that no reasonable trier of fact could find for the nonmoving party; the  
14 evidence presented must establish beyond controversy every essential element of the  
15 claim. *Southern Cal. Gas. Co. v. City of Santa Ana*, 336 F.3d 885, 888–89 (9th Cir.  
16 2003).

17 If the moving party meets their initial burden, the burden then shifts to the  
18 nonmoving party to establish a genuine issue of material fact for trial. *Matsushita Elec.*  
19 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–87 (1986). Genuine disputes are  
20 those for which the evidence is such that a “reasonable jury could return a verdict for  
21 the nonmoving party.” *Anderson*, 477 U.S. at 257. Material facts are those which might  
22 affect the outcome of the suit under governing law. *Id.* A mere scintilla of evidence is  
23 insufficient to create a factual dispute. *Id.* at 252. Likewise, the nonmoving party cannot  
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1 “defeat summary judgment with allegations in the complaint, or with unsupported  
2 conjecture or conclusory statements.” *Hernandez v. Spacelabs Med. Inc.*, 343 F.3d  
3 1107, 1112 (9th Cir. 2003).

4 Allegations based merely on the plaintiff’s belief are insufficient to oppose  
5 summary judgment, as are unsupported conjecture and conclusory statements. *Id.*;  
6 *McElyea v. Babbitt*, 833 F.2d 196, 197–98 n.1 (9th Cir. 1987). In ruling on a motion for  
7 summary judgment, the court must draw all reasonable inferences in favor of the  
8 nonmoving party, *Matsushita Elec. Indus. Co.*, 475 U.S. at 587, and may not weigh the  
9 evidence or make credibility determinations, *Anderson*, 477 U.S. at 248. As discussed  
10 above, because Plaintiff did not respond to the summary judgment motion or submit any  
11 pleadings under penalty of perjury, the Court cannot consider the allegations in  
12 Plaintiff’s Complaint as evidence.

### 13 **B. Plaintiff’s Section 1983 Claims**

14 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (a) the  
15 conduct complained of was committed by a person acting under color of state law, and  
16 (b) the conduct deprived a person of a right, privilege, or immunity secured by the  
17 Constitution or laws of the United States. See *Parratt v. Taylor*, 451 U.S. 527, 535  
18 (1981), overruled on other grounds, *Daniels v. Williams*, 474 U.S. 327 (1986).

#### 19 **a. Plaintiff’s Fourteenth Amendment Claims against Defendants** 20 **Yackan, McCann, and Morgan**

21 Plaintiff claims Defendants violated his Fourteenth Amendment right to medical  
22 care as a pretrial detainee when: (1) Nurse Kimberly Yackan requested that he discuss  
23 a medical condition in the presence of others, (2) Nurse Yackan did not permit Plaintiff  
24 to stop taking Sublocade after he began experiencing abdominal pain and headaches  
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1 and (3) his meals were insufficient because Sergeants McCann and Morgan did not  
2 sufficiently consider the complaints he made about his food allergies.

3 The Due Process Clause of the Fourteenth Amendment prohibits the government  
4 from punishing pretrial detainees “prior to an adjudication of guilt in accordance with the  
5 due process of law.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Plaintiff asserts that  
6 Defendants violated the Fourteenth Amendment and Eighth Amendment by providing  
7 inadequate medical care. Dkt. 11 at 4.

8 Both the Fourteenth and Eight Amendment provide a minimum standard of care  
9 for determining the rights of a pretrial detainee to medical treatment. *Gordon v. Cnty. of*  
10 *Orange*, 888 F.3d 1118, 1122 (9th Cir. 2018). Inadequate medical care claims are  
11 treated as claims challenging a pretrial detainee’s “conditions of confinement” and are  
12 judged under an “objective deliberate indifference standard.” *Id.* at 1125. Because  
13 Plaintiff was a pretrial detainee at the time of these events, his claims for inadequate  
14 medical care do not arise under the Eighth Amendment as alleged in his complaint –  
15 they arise under the Fourteenth Amendment only. *See Castro v. Cty. of L.A.*, 833 F.3d  
16 1060, 1067–68 (9th Cir. 2016).

17 When bringing a claim against an individual defendant under the Due Process  
18 Clause of the Fourteenth Amendment for unconstitutional medical care in a jail, a  
19 plaintiff must show: “(i) the defendant made an intentional decision with respect to the  
20 conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at  
21 substantial risk of suffering serious harm; (iii) the defendant did not take reasonable  
22 available measures to abate that risk, even though a reasonable official in the  
23 circumstances would have appreciated the high degree of risk involved—making the  
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1 consequences of the defendant's conduct obvious; and (iv) by not taking such  
2 measures, the defendant caused the plaintiff's injuries." *Gordon*, 888 F.3d at 1125.

3 The "mere lack of due care" by an official does not violate the Fourteenth  
4 Amendment; the plaintiff must prove "more than negligence but less than subjective  
5 intent—something akin to reckless disregard." *Id.* (quoting *Daniels*, 474 U.S. at 330-31).  
6 Thus, while a plaintiff need not show that a prison official intended to harm them, they  
7 must show that the official "knew of and disregard[ed]" the substantial risk of harm to  
8 plaintiff's health. *Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019) (quoting *Lemire v.*  
9 *Cal. Dep't of Corr. & Rehab.*, 726 F.3d 1062, 1074 (9th Cir. 2013) (alterations in  
10 original)).

11 To survive Defendants' motion for summary judgment, Plaintiff must establish a  
12 genuine issue of material fact as to the existence of the *Gordon* elements—against  
13 Defendants Yackan, McCann, and Morgan—in his case.

14 Plaintiff must present evidence beyond his own conclusory allegations and must  
15 show how each defendant personally participated in the alleged wrongdoing. He must  
16 present evidence that Ms. Yackan's request to discuss his medical condition in the  
17 presence of others put him at substantial risk of suffering serious harm *and* that she  
18 knew and disregarded this risk.

19 Further, if Plaintiff is attempting to state a claim under PREA based on Ms.  
20 Yackan's conduct, he cannot do so. PREA was enacted to study the problem of prison  
21 rape and to authorize the reporting of incidents of rape but nothing in the Act creates a  
22 private right of action enforceable under § 1983. See *Law v. Whitson*, 2:08-CV-0291–  
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1 SPK, 2009 WL 5029564, \*4 (E.D. Cal. Dec. 15, 2009); *Trost v. Cox*, 3:14–CV–611–  
2 MMD–WGC, ECF No. 3, \*9 (D. Nev. April 10, 2015).

3 Plaintiff must present reliable evidence to support his lay opinion that the  
4 Sublocade harmed him or was medically inappropriate, and that Nurse Yackan’s  
5 consultation with Plaintiff after he complained of the problems he had with Sublocade  
6 was a substantial risk to Plaintiff’s health. *See Taylor v. List*, 880 F.2d 1040, 1045-46  
7 (9th Cir. 1989) (“A summary judgment motion cannot be defeated by relying solely on  
8 conclusory allegations unsupported by factual data.”); *see also Quintana v. Santa Fe*  
9 *Cnty. Bd. of Commissioners*, 973 F.3d 1022, 1032 (10th Cir. 2020) (affirming dismissal  
10 of inadequate medical treatment claim when plaintiff, a pretrial detainee, did not exhibit  
11 any symptoms of illness or medical emergency related to heroin withdrawal). There is  
12 no genuine dispute of material facts that Defendant Yackan’s actions put Plaintiff at  
13 substantial risk of suffering serious harm.

14 As for his dietary allergy, the Court finds no genuine dispute of material facts to  
15 show Defendants were deliberately indifferent to his food allergy. After Plaintiff informed  
16 Defendants of his egg allergy, the jail attempted to eliminate eggs from his meals and  
17 provide replacements that meet his nutritional needs. Although there were times when  
18 he was provided eggs in his meals, Plaintiff has not produced evidence showing that  
19 this was more than negligence on the part of Defendants; he has made no showing that  
20 his health deteriorated as a result of the meals he was provided.

21 Plaintiff acknowledged that the Jail replaced mayonnaise with mustard, stopped  
22 putting dressing on his salads, and gave him peanut butter and cheese instead of  
23 hardboiled eggs. Dkt. 27, Tatistcheff Decl., Exhibit A at 36:4-37:4.

1 Plaintiff's claims against Defendants Yackan, McCann, and Morgan allege at  
2 most, negligence, or a difference in medical opinion, which does not establish a  
3 constitutional violation. *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990);  
4 *Thompson v. Worch*, 6 F. App'x 614, 616 (9th Cir. 2001); *Anchez v. Vild*, 891 F.2d 240,  
5 242 (9th Cir. 1989).

6 Thus, Defendants motion for summary judgment on Plaintiff's Fourteenth  
7 Amendment claims should be GRANTED.

8 **b. Plaintiff's First Amendment Claim against Sergeants McCann and**  
9 **Morgan**

10 "[P]risoners have a protected First Amendment interest in having properly marked  
11 legal mail opened only in their presence." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204,  
12 1211 (9th Cir. 2017). The purpose of having prison officials open legal mail in an  
13 inmate's presence is to prevent attorney-client communications from being chilled. See  
14 *Nordstorm v. Ryan*, 762 F.3d 903, 911 (9th Cir. 2014) ("The harm [the plaintiff] alleges  
15 is not that tainted evidence was used against him but that his right to privately confer  
16 with counsel has been chilled. This is a plausible consequence of the intentional reading  
17 of his confidential legal mail.").

18 An inmate's right to communicate with his or her attorney on a confidential basis  
19 implicates both the Sixth Amendment right to counsel and the First Amendment right to  
20 communicate, and as such, prison officials may inspect, but not read, an inmate's  
21 outgoing legal mail. *Nordstrom v. Ryan*, 856 F.3d 1265, 1272 (9th Cir. 2017). While  
22 allegations of the improper opening of two pieces of a prisoner's legal mail may be  
23 sufficient to state a First Amendment claim, see *Hayes*, 849 F.3d at 1208, 1212-13, a  
24 Section 1983 action based on a single incident of the improper opening of legal mail can  
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1 only be maintained based on allegations that prison staff acted deliberately or  
2 intentionally. *See Sims v. Correctional Officer Palacios*, Case No. 2:23-cv-01310-VBF-  
3 PD, 2024 WL 4744016, at \*2 (C.D. Cal. Jan. 9, 2024) (“[T]he negligent opening of a  
4 prisoner’s legal mail outside the inmate’s presence does not rise to the level of a  
5 constitutional violation and, therefore, does not violate § 1983.”; and “A plaintiff must  
6 show that the opening of ‘legal mail’ was due to more than negligence to state a  
7 constitutional violation.”) (citations omitted); *Suber v. Snohmish Cnty. Jail Mail Room*,  
8 Case No. C18-428 RAJ-BAT, 2018 WL 7107608, at \*2 (W.D. Wash. Oct. 29, 2018)  
9 (finding the plaintiff’s allegation that one time he received legal mail could not state a  
10 claim that his legal mail was opened intentionally).

11 Plaintiff contends Defendants McCann and Morgan violated his First Amendment  
12 right when Defendant McCann opened Plaintiff’s outgoing legal mail to his defense  
13 attorney’s paralegal outside of his presence. He states the mail to the paralegal  
14 contained information about his evidentiary hearing, and the envelope was sealed and  
15 stamped as “legal mail”. Plaintiff testified that Sergeant McCann intentionally opened  
16 the mail, read it, and returned it to him after determining that the mail was not legal in  
17 nature.

18 First, Plaintiff must show each Defendant personally participated in this alleged  
19 violation. While Plaintiff has pled sufficient facts to establish personal participation on  
20 the part of Defendant McCann, he has not done so with respect to Defendant Morgan.  
21 Plaintiff did not plead that Defendant Morgan opened his legal mail, read it or returned it  
22 to Plaintiff opened. Plaintiff states Defendant Morgan informed him that the issue was  
23 not “grievable” and threatened to put Plaintiff in the IMU, but he alleges no other facts  
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1 against Defendant Morgan to explain how this violated his First Amendment right to  
2 have his properly marked legal mail opened only in his presence.

3 To the extent Plaintiff alleges it was Defendant Morgan's threat of putting him in  
4 the IMU that violated his First Amendment right to seek redress of grievances, Plaintiff  
5 has alleged nothing more than speculation that Defendant Morgan acted out of  
6 retaliation. *See Juarez v. Butts*, No. 20-17467, 2022 WL 16756354, at \*2 (9th Cir. Nov.  
7 8, 2022) (affirming the district court's grant of summary judgment in the defendants'  
8 favor and explaining that the plaintiff's First Amendment retaliation claim failed on its  
9 merits because the plaintiff "offer[ed] only his bare speculation that any [d]efendant's  
10 actions were substantially driven by a desire to retaliate against [him] for his protected  
11 speech," and "there [was] 'no factual basis' upon which a factfinder could determine [the  
12 defendants] had acted with retaliatory motives").

13 Therefore, Plaintiff's First Amendment claim against Defendant Morgan should  
14 be dismissed.

15 Turning to the allegations against Defendant McCann, although prison officials  
16 may inspect mail for contraband, they may not read it. *Nordstrom v. Ryan*, 856 F.3d  
17 1265,1272 (9th Cir. 2017). [T]he absence of a clear pattern beyond [a couple of]  
18 incidents does not preclude relief" because "even isolated incidents of improper mail  
19 opening may, in appropriate circumstances, be sufficient to allege a [constitutional]  
20 violation." *Mangiaracina v. Penzone*, 849 F.3d 1191, 1197 (9th Cir. 2017). *See also*  
21 *Procunier v. Martinez*, 416 U.S. 396, 413 (1974) (Prison officials may justifiably censor  
22 outgoing mail concerning escape plans, containing information about proposed criminal  
23 activity, or transmitting encoded messages); *Witherow v. Paff*, 52 F.3d 264, 265 (9th  
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1 Cir. 1995) (per curiam) (Prison officials may visually inspect outgoing mail to determine  
2 whether it contains contraband material that threatens prison security or material  
3 threatening the safety of the recipient.).

4 Defendants, through a declaration from Sergeant McCann or otherwise, do not  
5 explain why Plaintiff's mail to his lawyer's paralegal was not considered legal mail. If it  
6 was Plaintiff's legal mail, then Defendant McCann decision to read the mail would have  
7 been a possible First Amendment violation. The facts allow a reasonable inference that  
8 Plaintiff's legal mail was opened intentionally.

9 As noted above, "a plaintiff need not allege a longstanding practice of violating  
10 his First Amendment rights" regarding a legal mail claim. *Hayes*, 849 F.3d at 1212. The  
11 fact that Plaintiff states his mail was related to his upcoming evidentiary hearing,  
12 documented as legal mail, returned to him opened, creates a genuine dispute over  
13 whether Defendant McCann opened the mailing deliberately. *See Nordstrom*, 856 F.3d  
14 at 1271–74 (explaining that "prison officials may inspect, but may not read, an inmate's  
15 outgoing legal mail in his presence.").

16 Plaintiff's mail to the Courts, however, is not considered "legal mail," and can be  
17 opened outside of his presence. *Keenan v. Hall*, 83 F.3d 1083, 1094 (9th Cir. 1996),  
18 *opinion amended on denial of reh'g*, 135 F.3d 1318 (9th Cir. 1998). *See also O'Keefe v.*  
19 *Van Boening*, 82 F.3d 322, 326 (9th Cir. 1996) (a prison need not treat all mail sent to  
20 and from government agencies and officials as legal mail).

21 Defendants refer to a completely different incident regarding Plaintiff's incoming  
22 mail and appear to justify opening Plaintiff's mail given Plaintiff's history of attempting to  
23 contact his wife despite a no-contact order being in place. Dkt. 27, Tatistcheff Decl.,  
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1 Exhibits B, C. See *also* Exhibit A at 62:1-5. But this is a different incident than the one  
2 Plaintiff refers to in his complaint and his deposition.

3 Taking all the facts in the light most favorable to Plaintiff, Plaintiff has shown the  
4 existence of genuine issues for trial from which a jury could reasonably render a verdict  
5 in his favor on his legal mail claim. Thus, Defendant McCann should not be entitled to  
6 summary judgment on Plaintiff's legal mail claim.

7 **C. Plaintiff's Claims Against Clallam County Jail and Clallam County Medical**

8 In his remaining claim, Plaintiff contends Clallam County Jail and Clallam County  
9 Medical violated Plaintiff's Fourteenth Amendment rights by opening his legal mail,  
10 denying him "fair, safe treatment, denying him "remedies to correct their behavior,"  
11 "threatening retaliation," lying to him, and providing him improper meals. Dkt. 4 at 9-10.  
12 The Jail and medical department, however, are not proper defendants in a Section 1983  
13 action. 42 U.S.C. § 1983 applies to the actions of "persons" acting under color of state  
14 law. This definition includes municipalities, such as counties. *Monell v. New York City*  
15 *Dept. of Social Services*, 436 U.S. 658, 690 (1978). To bring an appropriate § 1983  
16 action, a plaintiff "must name the county or city itself as party to the action, and not the  
17 particular municipal department or facility where the alleged violation occurred."  
18 *Osborne v. Vancouver Police*, 2017 WL 1294573, at \*9 (W.D. Wash. 2017); *see also*  
19 *Vance v. Santa Clara Co.*, 928 F. Supp. 993, 996 (N.D. Cal. 1996); *Pressley v. San*  
20 *Diego Sheriff Central County Jail*, 2017 WL 4960221, at \*3 (S.D. Cal. 2017); *Greenfield*  
21 *v. Brenner*, 2006 WL 776772, at \*5 (E.D. Wash. 2006). In this case, Clallam County is  
22 the proper defendant. Construing Plaintiff's pleadings liberally, the Court will analyze his  
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1 claims against Clallam County Jail and Clallam County Medical to be against the  
2 County.

3 A county may only be held liable if its policies are the “moving force [behind] the  
4 constitutional violation.” *City of Canton v. Harris*, 489 U.S. 378, 389 (1989) (quoting  
5 *Monell*, 436 U.S. at 694). To recover, a plaintiff must show county employees or agents  
6 acted through an official custom or policy that permits violation of plaintiff’s civil rights, or  
7 the entity ratified the unlawful conduct. *See Monell*, 436 U.S. at 690-91.

8 Plaintiff does not identify a Clallam County policy, custom, or practice that was  
9 responsible for his allegations. To defeat a summary judgment motion, the non-moving  
10 party may not merely rely on its pleadings or on conclusory statements. *Celotex Corp. v.*  
11 *Catrett*, 477 U.S. 317, 324 (1986). Plaintiff did not file a response to Defendants’ motion  
12 for summary judgment, and did not direct the Court to any other evidence in his  
13 deposition testimony supporting a finding that Clallam County had an official municipal  
14 policy or custom of violating constitutional rights or that such policy caused the violation  
15 of Plaintiff’s constitutional rights; therefore, the Court should find that Plaintiff has not  
16 met his burden to show a genuine issue for trial on the County’s liability for its policies.

17 Defendants’ motion for summary judgment on Plaintiff’s claim against Clallam  
18 County should be granted.

19 **D. Defendant King**

20 Finally, Defendant King is entitled to summary judgment because there is no  
21 evidence that he personally participated in the deprivation of Plaintiff’s constitutional  
22 rights. Plaintiff names Defendant King as party in his Complaint but makes no  
23 allegations against him in the Complaint or his deposition testimony. A prerequisite to  
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1 recovery under the Civil Rights Act, 42 U.S.C. § 1983, is that the plaintiff prove that the  
2 defendants deprived him of a right secured by the Constitution and the laws of the  
3 United States. *Gomez v. Whitney*, 757 F.2d 1005, 1006 (9th Cir. 1985). Therefore,  
4 liability under § 1983 arises *only* upon a showing of personal participation by the  
5 defendant. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (emphasis added)

6 Because Plaintiff has stated no facts and claims against Defendant King, the Court  
7 should grant Defendant King's motion for summary judgment and dismiss Defendant  
8 King as a party from the case.

### 9 **E. Qualified Immunity**

10 Government officials are entitled to qualified immunity in suits against them for an  
11 alleged violation of a constitutional right unless a plaintiff makes a two-part showing.  
12 *Saucier v. Katz*, 533 U.S. 194, 200 (2001). The plaintiff must show that officials violated  
13 a constitutional right *and* that this right was "clearly established." *Id.* A court may  
14 consider the two prongs in whatever order it chooses. *Pearson v. Callahan*, 555 U.S.  
15 223, 236 (2009).

16 When qualified immunity is reviewed in the context of a defense motion for  
17 summary judgment, the evidence must be considered in the light most favorable to the  
18 plaintiff with respect to central facts. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (per  
19 curiam). If there is a genuine issue of material fact related to both: (1) Whether the  
20 defendant's conduct violated a constitutional right and (2) Whether it would be clear to a  
21 reasonable officer that their conduct was unlawful under the circumstances they  
22 confronted, then summary judgment granting qualified immunity is not appropriate.  
23 *Bonivert v. City of Clarkston*, 883 F.3d 865, 871-72 (9th Cir. 2018).

1 As discussed above, viewed in light most favorable to the Plaintiff, the facts do  
2 not show that the Defendants Morgan, Yackan, King, and McCann (with respect to  
3 Plaintiff's Fourteenth Amendment claim only) violated Plaintiff's Constitutional rights.  
4 Accordingly, Defendants Morgan, Yackan, and King should be entitled to qualified  
5 immunity because the first prong of the qualified immunity test is not satisfied.  
6 Defendant McCann should be entitled to qualified immunity on Plaintiff's Fourteenth  
7 Amendment claim against him.

8 If the Court finds Defendant McCann's motion for summary judgment on  
9 Plaintiff's First Amendment claim should be denied, then the Court must determine  
10 whether the constitutional right was clearly established in light of the specific context of  
11 the case. *Robinson v. York*, 566 F.3d 817, 821 (9th Cir. 2009) (citing *Saucier v. Katz*,  
12 533 U.S. 194, 201 (2001)). Whether an official is entitled to qualified immunity "generally  
13 turns on the objective legal reasonableness of the action assessed in light of the legal  
14 rules that were clearly established at the time it was taken." *Anderson v. Creighton*, 483  
15 U.S. 635, 639 (1987) (simplified).

16 "For a right to be 'clearly established,' existing 'precedent must have placed the  
17 statutory or constitutional question *beyond debate*,' such that 'every' reasonable official,  
18 not just 'a' reasonable official, would have understood that he was violating a clearly  
19 established right." *Thompson v. Rahr*, 885 F.3d 582, 587 (9th Cir. 2018) (quoting  
20 *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)) (emphasis in original).

21 Defendants acknowledge the applicable standards for qualified immunity, but  
22 they cite no authority to support their claim for qualified immunity and simply argue that  
23  
24  
25

1 “Plaintiff will be unable to establish that any of the Defendants should have known that  
2 their conduct violated a clearly established constitutional right.” Dkt. 26 at 15.

3 As discussed, Defendants mischaracterize Plaintiff’s First Amendment claim and  
4 did not sufficiently address the incident of Plaintiff’s outgoing legal mail to the paralegal.  
5 Defendants, rather, assume Plaintiff’s claim is the same claim Defendant McCann  
6 documented in an email to Chief Deputy Wenzl conceding that he opened Plaintiff’s  
7 incoming mail. The question is whether Plaintiff has a clearly established right under the  
8 First Amendment to send legal mail free from an inspection that involves a prison official  
9 reading the letter. Because Defendant McCann does not address that question, and  
10 because he argues for qualified immunity based on a misinterpretation of Plaintiff’s  
11 claim, Defendant McCann has not shown he is entitled to judgment as a matter of law  
12 based on qualified immunity. *See Evans v. Gower*, No. 2:17-CV-01162-MK, 2022 WL  
13 3226968, at \*9 (D. Or. Aug. 10, 2022) (denying the defendants’ motion for summary  
14 judgment on the basis of qualified immunity because, [a]fter *Hayes [v. Idaho]*, 849 F.3d  
15 1204, 1211 (9th Cir. 2017)], “every reasonable official would have understood they were  
16 violating a clearly established right by opening Plaintiff’s legal mail outside of his  
17 presence.”).

18 If a jury finds that the mail was not legal in nature, was not properly marked, or  
19 that Defendant McCann did not open the legal mail, then his conduct would not violate  
20 clearly established law. Yet if a jury finds that the mail was legal, was properly marked  
21 and Defendant McCann did open and read (as opposed to only inspect) the legal mail  
22 outside of Plaintiff’s presence, then his conduct likely violated Plaintiff’s clearly  
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25

1 established First Amendment right. *See Hayes*, 849 F.3d at 1210. Qualified immunity  
2 may not be resolved at summary judgment on these facts.

### 3 CONCLUSION

4 For all these reasons, the undersigned recommends that Defendants' motion for  
5 summary judgment (Dkt. 26) should be GRANTED in part and DENIED in part. The  
6 motion should be GRANTED as to Plaintiff's Fourteenth Amendment claims related to  
7 inadequate medical care against Defendants Yackan, Morgan, and McCann, Plaintiff's  
8 First Amendment claim against Defendant Morgan, Plaintiff's *Monell* claims against the  
9 County, the Medical Department, and the Jail, and Plaintiff's claims against Defendant  
10 King. The undersigned recommends that the motion should be DENIED as to Plaintiff's  
11 First Amendment claim against Defendant McCann, and Defendant McCann should not  
12 be entitled to qualified immunity on summary judgment.

13 The parties have **fourteen (14) days** from service of this Report and  
14 Recommendation to file written objections thereto. 28 U.S.C. § 636(b)(1); FRCP 72(b);  
15 *see also* FRCP 6. Failure to file objections will result in a waiver of those objections for  
16 purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the above  
17 time limit, the Clerk shall set this matter for consideration on May 23, 2025 as noted in  
18 the caption.

19  
20 Dated this 8<sup>th</sup> day of May, 2025.

21 

22 \_\_\_\_\_  
23 Theresa L. Fricke  
24 Chief Magistrate Judge  
25